STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 24, 2004
v	No. 243381 Kalamazoo Circuit Court
DAVID MICHAEL SPARAZYNSKI, Defendant-Appellant.	LC No. 00-000798-FH

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carrying a concealed weapon, MCL 750.227. He was sentenced to 24 months probation, and appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant, a student at Western Michigan University, was apprehended outside of his classroom on April 12, 2000, while carrying a 9-millimeter semi-automatic handgun in his fanny pack. He also had a permit to carry a concealed weapon, which had expired on April 8, 2000. Defendant testified that an unidentified clerk at the Macomb County Gun Board had told him that he had a two-month grace period that would allow him to continue to carry the weapon so long as he had completed the process for renewal of his permit.

Defendant first argues that the trial court erred in refusing to instruct the jury on a defense of mistake since the effect was strict liability. Defendant asserts that under *People v Perry*, 145 Mich App 778; 377 NW2d 911 (1985), strict liability cannot be presumed in a criminal statute. However, in *People v Ramsdell*, 230 Mich App 386, 399 n 3; 585 NW2d 1 (1998), the Court recognized that there could be strict liability crimes, and stated:

> While we recognize that the *Perry* Court went on to include a discussion of the general principle that strict liability will not be presumed in a criminal statute, see *id*. at 783-785, that discussion was not essential to the pertinent holding. As noted in *People v Rau*, 174 Mich App 339, 342; 436 NW2d 409 (1989), the decision in *Perry* "turned on the issue of what constituted possession." Thus, whether the crime of prisoner in possession of a weapon is or is not a strict liability crime was immaterial to the actual decision in *Perry*. Under the actual holding in *Perry*, if the defendant prisoner in that case held a weapon only because he had taken it from his attacker, then the defendant never "possessed" the weapon and, thus,

> would be innocent of the crime of prisoner in possession of a weapon *even if* that crime is a strict liability crime. [Emphasis in original.]

In *Ramsdell*, the Court noted that MCL 800.281(4) had no intent requirement and refused to read into the statute a requirement that the defendant "knowingly" possessed contraband. Similarly, in this case there was no intent requirement. Since intent was not at issue, whether defendant was mistaken is irrelevant. Mistake was not a valid defense. Therefore, defendant was not entitled to a jury instruction on the defense of mistake.

Defendant next argues that once the trial court determined that the applicable defense was not mistake, but entrapment by estoppel, it was required to hold an evidentiary hearing. Although *People v Woods*, 241 Mich App 545, 558; 616 NW2d 211 (2000), sets forth such a requirement, at trial, defendant concurred with the trial court that this should have been arranged at the pre-trial stage. We note that the issue was raised at trial after all proofs had been presented. Also, this Court will not reverse when the aggrieved party contributes to an error by plan or negligence. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999). In his brief on appeal, defendant failed to identify any additional information that would have been brought out at an evidentiary hearing that was not already presented at trial, we decline to address this issue.

Defendant also claims that the court erred in concluding that entrapment by estoppel was not established by a preponderance of the evidence. This issue was not suggested by the questions presented and therefore, we need not address it. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). However, we would not conclude that the trial court's findings were clearly erroneous. See *Woods*, *supra* at 555. Moreover, we note that defendant's assertion that the estoppel issue should have been submitted to the jury is directly contrary to the direction in *Woods* that, "in Michigan, entrapment is a question of law for the trial court to decide, not a question of fact for the jury to resolve." *Id.* at 554.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood